

Message

From: Bill Platts Ex. 6 Personal Privacy (PP)
Sent: 2/15/2023 8:36:30 PM
To: Hubner, Matt (he/him/his) [Hubner.Matt@epa.gov]
Subject: Concerns regarding Sombrero Marsh and wetlands in Boulder, CO

Hi Matt,

Hope you're well. I'm checking in with some new information which I think is pertinent to our discussions regarding Sombrero Marsh.

On Feb 8, a neighbor (Cindy Warren) received the email below from Kate Lunz of Fish and Wildlife, informing her that they are initiating a Section 7 consultation for Sombrero Marsh and the surrounding wetlands. Ms. Lunz also mentions they believe the U.S. Army Corps of Engineers should be involved to determine if streams/ditches in the project area are jurisdictional as tributaries to a traditionally navigable water body. These events seem significant.

Additionally, as I mentioned previously, the section 7 that was in the HUD application for 6500 Arapahoe was for a different property - specifically a Habitat for Humanity property in Longmont that consists of a nearly vacant lot in the general region of a ditch. The project summary for the Longmont property is-

Project Summary

Consultation Code: 06E24000-2021-SLI-0579

Event Code: 06E24000-2021-E-01511

Project Name: St. Vrain Habitat 50 E Rogers Rd Longmont, CO

Project Type: Federal Grant / Loan Related

Project Description: St Vrain Habitat proposes to redevelop the land to construct owner occupied affordable housing.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@40.163587250000006,-105.09056417133044,14z>

Counties: Boulder

It appears they used a Section 7 study for a completely different location. Additionally, there is an aerial shot of Sombrero Marsh as well as pictures of the Longmont site; we are unclear as to how the Sombrero Marsh shot appears to be included in the study. We believe this may have been how they were able to certify that "the project will not impact on - or off - site wetlands" and "no significant impact on the human environment". And with just "vacant land" next to the project, "this project includes no activities that would require further evaluation under HUD's noise regulation". Anyone who looked at it on google earth could easily see that was not correct.

We are very concerned about the propriety of using a Section 7 for a different property in the HUD application for 6500 Arapahoe; we believe it potentially raises significant issues. Could the EPA look into this, and/or encourage HUD to investigate as well?

Please let me know your thoughts when you can and if your wife might be able to help.

Thanks very much for your support.

Regards,

Bill Platts

From: Lunz, Kate S <kathleen_lunz@fws.gov>
Sent: Wednesday, February 8, 2023 12:43 PM
To: Cindy Warren **Ex. 6 Personal Privacy (PP)**
Subject: RE: [EXTERNAL] Concerns regarding Sombrero Marsh and wetlands in Boulder, CO

Hi Cindy,

Thank you for providing some additional information and for submitting your concerns to the U.S. Fish and Wildlife Service regarding the "Modular Production Factory" project. I have reached out to the Boulder HUD contacts listed on the package and requested that they initiate Informal Section 7 consultation with us so that we may evaluate this project fully. I have also suggested that they contact the U.S. Army Corps of Engineers regarding a determination if the streams/ditches in the project area are jurisdictional as tributaries to a traditionally navigable water body.

Thank you,
Kate Lunz

Kate Lunz, Ph.D. (she/her)
Fish and Wildlife Biologist / Preble's Lead
Colorado Ecological Services Office
134 Union Blvd
Lakewood, CO 80228
(303) 236-4752

From: Cindy Warren **Ex. 6 Personal Privacy (PP)**
Sent: Wednesday, February 8, 2023 9:02 AM
To: Lunz, Kate S <kathleen_lunz@fws.gov>
Cc: Alt, Nicole <Nicole_Alt@fws.gov>; Niva, Liisa M <Liisa_Niva@fws.gov>; Darling, Lizz <lizz_darling@fws.gov>
Subject: Re: [EXTERNAL] Concerns regarding Sombrero Marsh and wetlands in Boulder, CO

Good morning. Thanks for getting back to me. I have a few questions -

---You mention the project footprint is outside the Marsh Preservation area. However, the wetlands will be within a few hundred feet of the factory and will be negatively impacted by the factory in many ways (see attached County planning document from 9/21) including noise, light, and visual impacts. There will also be tremendous amounts of construction traffic (literally thousands of trucks) which will pass within 10 feet of the Marsh border. Additionally, the regulated 50-foot wetland buffer around the Marsh overlaps the southwestern portion of the project area (see page 4 in the attached ERO document [which was obtained 2 months after submission of the HUD application]). So, although the wetlands are not in the actual footprint of the factory, they are certainly within the City's definition of the project area; close enough to suffer significant negative effects.

---Sombrero Marsh is listed in Fish and Wildlife's National Wetland inventory, As such, I believe HUD document Title 24 Part 55 would be pertinent. In Subpart A, 55.2, (11) it says -

"As primary screening, HUD or the responsible entity shall verify whether the **project area** is located in proximity to wetlands identified on the National Wetlands Inventory (NWI). If so, HUD or the responsible entity should make a reasonable attempt to consult with the Department of the Interior, Fish and Wildlife Service (FWS), for information concerning the location, boundaries, scale, and classification of wetlands within the area. If an NWI map indicates the presence of wetlands, FWS staff, if available, must find that no wetland is present in order for the action to proceed without further processing."

So, in this case a wetland listed on the National Wetlands Inventory is in very close proximity to the project area (see ERO attachment), and thus it appears this site should at least be evaluated by FWS.

If evaluation was not requested by HUD or the City, can FWS evaluate the site at its own discretion? If not, who should be involved in an attempt to get this done - would it be the EPA or some other entity?

---The HUD application for 6500 Arapahoe does contain a Fish and Wildlife Section 7 Consultation Issued Biologic Opinion (see attached HEROS document; the Section 7 is approximately 80% of the way through the application - a few pages past appendix E). However, the evaluation is for a site in Longmont. The identifying information for the project in the 6500 HUD application is as follows -

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Associated with the Section 7 Consultation there are maps and aerial photos of both Longmont and 6500 Arapahoe in Boulder. The site in Longmont was vacant land with no nearby wetlands or Marsh, although a ditch is present in the general area.

---If you issued a Section 7 Consultation for vacant land in Longmont in the region of a ditch, shouldn't a Section 7 be performed for a factory being constructed next to a Critical Wildlife Habitat (per the County) and a wetland identified on the National Wetlands Inventory?

---Are you concerned that a FWS report on a site different than the application site is present in the application?

---Should there be some sort of determination by FWS, or some other governmental entity - such as the EPA or the Corps, into how and why the Longmont evaluation is in the Boulder application?

---As you note, the East Boulder Ditch is very close to the project area. I believe the East Boulder Ditch is also listed on the National Wetlands Inventory, and the ERO report mentions it as a probable wildlife movement corridor. Additionally, the East Boulder Ditch has a potential surface connection with South Boulder Creek, which is a WOTUS. Should FWS evaluate impacts on the East Boulder Ditch?

---Should the Corps of Engineers be involved?

---You mentioned there are no listed species within the project area. However, the attached ERO mentions 3 threatened species and 1 endangered species potentially found in the project area - specifically Canada lynx, Preble's meadow jumping mouse, piping plover and whooping crane. In the ERO report, they state the project area occurs within the overall range of Preble's meadow jumping mouse. Additionally, we see occasional lynx here; I believe they could be Canada lynx, although I can't state that with certainty.

The City hopes to begin factory construction by spring, so time is of the essence.

Thank you for addressing my concerns. I look forward to your reply, and I appreciate any help you can provide to safeguard the Marsh and wetlands.

Regards,

Cindy Warren M.D.

From: Bill Platts [Ex. 6 Personal Privacy (PP)]
Sent: Wednesday, February 15, 2023 12:37 PM
To: Cindy Warren [Ex. 6 Personal Privacy (PP)]
Subject: Fw: Concerns regarding Sombrero Marsh and wetlands in Boulder, CO

Added a note about Matt's wife

From: Bill Platts [Ex. 6 Personal Privacy (PP)]
Sent: Wednesday, February 15, 2023 12:28 PM
To: Cindy Warren [Ex. 6 Personal Privacy (PP)]
Subject: Fw: Concerns regarding Sombrero Marsh and wetlands in Boulder, CO

DRAFT COPY - let me know your thoughts or any changes

Thanks,
Bill

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